



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Mr. Ivan J. Mlachak
Feldman & Associates
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR95-1493

Dear Mr. Mlachak:

As counsel for the Fort Bend Independent School District ("the school district"), you ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 27939.

The school district received a request for "all itemized copies of the bills from your attorney, David Feldman, in 1994 through today's date." The school district seeks to withhold the requested information based on sections 552.107(1) and 552.111 of the Government Code.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client.¹ In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Thus, information in a fee bill may be withheld if it documents confidences of the client or legal advice and opinions rendered to the client or to associated attorneys. *See id.* at 7; Open Records Decision No. 589 (1991). Thus, documentation of calls made, meetings attended, memos sent, or similar entries are not protected under this exception, unless they contain client confidences or legal advice. *See* Open Records Decision No. 589 (1991).

¹We note that section 552.107 was amended in the last legislative session. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 7, 1995 Tex. Sess. Law Serv. 5127, 5131 (Vernon) (to be codified as Gov't Code § 552.117). This amendment applies only to requests received by a governmental body on or after September 1, 1995. *Id.* § 26, 1995 Tex. Sess. Law Serv. at 5142. Therefore, the amended section does not apply to this request.

You assert that the fee bills in their entirety are within the attorney-client privilege. You claim that the bills contain matters protected under the privilege because "the description of the work performed reveals attorney/client communications, identifies legal and factual issues, and reveals the thought processes, plans and anticipated projects to be performed on behalf of the client." You contend that the time entries and the amount charged for each entry lead to information that compromises the privilege because it demonstrates the significance of the various issues.

If a governmental body seeks to withhold attorney fee bills under section 552.107(1), it must submit the bills to this office for review *and identify the portions that reveal client confidences or legal advice and opinion*. *Id.* at 1. You have not asserted that the fee bills contain attorney advice or opinion. Though the bills indicate that matters were discussed or reviewed, issues were researched, responses were prepared, and action was taken concerning various matters, it is not apparent to us that such entries reveal attorney advice or opinion.²

The fee bills you enclosed contain information about the content of conversations with individuals, for example, Blackmon's counsel, Mr. Forte, Mr. Petros, and Mr. Griffin. You have not provided information about the identity of these individuals or about whether the conversations were conducted in confidence. Assuming these individuals are representatives of the school district³ and the conversations were conducted in confidence,⁴ the school district may withhold such information based on section 552.107(1). We have marked the type of information that may be withheld if both of these conditions are met. The school district may not withhold the remainder of the fee bills under section 552.107(1).

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not

²We note that information that reveals an attorney's work product may be withheld pursuant to section 552.103(a) of the Government Code if the requirements for that exception are met. Open Records Decision No. 575 (1990) at 2.


³A "representative of the client" is "one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client." See TEX. R. CIV. EVID. 503(a)(2).

⁴A "confidential communication" is a communication "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." TEX. R. CIV. EVID. 503(a)(5).

encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. Other than the information that the school district may be able to withhold under section 552.107(1), the fee bills do they contain opinion, advice or recommendation concerning the policymaking of the school district; they are factual. We conclude that the school district may not withhold information in the fee bills based on section 552.111 of the Government Code.

In summary, the school district may withhold from required public disclosure the fee bill information about the content of conversations with individuals if such individuals are representatives of the school district and if the conversations were conducted in confidence. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 27939

Enclosures: Marked documents

cc: Mr. Fred B. Hartman
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(w/o enclosures)